fendant paid for the goods in accordance with the market price and plaintiff sued for the balance. The defendant prayed for a revision of the contract by the substitution of "general market prices" for "opening printed prices." [2] The trial court refused relief on the ground that no mistake had been made as every word used by the parties was intended by them. The Supreme Court in bank reversed this decision and ordered judgment for the defendant. It may be questioned whether the Supreme Court is correct in holding that there is a mistake where the parties are disappointed in their expectation of the occurrence of a future event. No authority is cited by the court. The California Civil Code confines mistake to an unconscious ignorance or forgetfulness of a fact past or present.[3] In thus limiting the scope of mistake the code is in accord with what is probably the better view.[4] It is suggested that the decision might be rested on the ground that an impossibility has arisen to the exact performance of the contract, but that the object of the contract is not impossible. The testimony shows that in using the words "opening printed prices" the parties were stating the most convenient evidence of the market price in place of the market price itself. In limiting plaintiff's recovery to the market price the court is not making a contract for the parties but is enforcing the contract as made by them, subordinating a particular intent to the general intent where the particular is no longer possible.[5]

H. H. P.

Criminal Law — Homicide — Included Offenses — Former Jeopardy. —A defendant was recently tried in the State of Washington on the charge of murder in the first degree. The evidence clearly showed a premeditated homicide committed by the defendant in revenge for the violation of the sanctity of his home. The court instructed the judge on the three degrees of homicide, and the jury found the defendant guilty of manslaughter. On appeal the Supreme Court reversed the verdict but ordered the defendant retried for first degree murder.[1]

The contention of the State in support of the instructions given covering the three degrees of homicide was, in brief, that the greater includes the less, and therefore a charge of murder includes a charge of manslaughter; and that moreover, since the jurors are the sole judges of the facts, the court cannot say as a matter of law that there is no evidence to establish any of the lesser or included crimes. The Supreme Court, however, refused to allow this argument, holding that a mere inclusion in law of a lesser degree does not involve an inclu-

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[2] Pursuant to Secs. 3399, 3401 and 3402 of the Civil Code of Cal.

[3] Cal. Civil Code, Secs. 3399, 1576 and 1577.

[4] Anson on Contracts (8th ed.), p. 157; Kerr on Fraud and Mistake (3rd ed.), p. 440.

[5] Civil Code of Cal., Secs. 1598, 1640, 1643 and 1650.

[1] State v. Ash (1912), 68 Wash. 194, 122 Pac. 995.

sion in fact, and that a jury should not be permitted by its verdict to establish a fact which there was no evidence to sustain. The ruling of the court on this question is logical, although other jurisdictions have come to a contrary conclusion.[2]

It would seem that in cases such as this one, strict logic might well be sacrificed a trifle on behalf of the security of society. It is a matter of common knowledge that juries will not bring in verdicts of first degree murder in what are commonly termed unwritten law cases.

When a defendant is indicted for murder, convicted of manslaughter, and the conviction is reversed, can he be retried for murder? Or does the conviction for manslaughter operate as an acquittal of murder and thus make available the plea of former jeopardy on a retrial for murder? In the principal case the Washington court holds that the defendant can be retried for murder, following the minority view so ably expounded by the United States Supreme Court.[3] The California doctrine is the other way.[4]

R. L. McW.

Election Law—Nomination of Presidential Electors—Disregard of Party Pledge by Members of Political Convention—Jurisdiction of Courts to Determine Whether a Convention Represents a Party.—Now that the political stir occasioned by the decision of the Supreme Court of California [1] in the Republican-Progressive fight over the presidential electors has subsided, it seems well to examine the decision with reference to the principles laid down by other courts. It will be remembered that the Republican convention, having 101 Progressive members and 13 Regular Republican members, nominated presidential electors pledged to vote for Roosevelt. Thereupon the minority of thirteen organized themselves as a convention and having nominated a ticket of Taft electors, sought to mandamus the Secretary of State to put this ticket, and not the other, on the ballot as that of the Republican party. The petition was denied on the grounds that the convention which nominated the Progressive ticket was regularly organized, according to the statute [2], and did not cease to be so because its members broke

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[2] People v. Young (1904), 88 N. Y. Supp. 1063; Clemmons v. State (1901), 43 Fla. 200, 30 So. 699; People v. Muhlner (1896), 115 Cal. 303, 47 Pac. 128; People v. Coulter (1904), 145 Cal. 66, 78 Pac. 348; People v. City (1909), 11 Cal. App. 702, 106 Pac. 257; People v. Herges (1910), 14 Cal. App. 273, 111 Pac. 624.

[3] Trono v. United States (1905), 199 U. S. 521; People v. Bennett (1896), 114 Cal. 56, 45 Pac. 1013; People v. Smith (1901), 134 Cal. 453, 66 Pac. 669; People v. McFarlane (1903), 138 Cal. 481, 71 Pac. 568, 72 Pac. 48; Huntington v. Superior Court (1907), 5 Cal. App. 288, 90 Pac. 141; People v. Solani (1907), 6 Cal. App. 103, 91 Pac. 654; Note to State v. Gillis, 5 L. R. A. (N. S.) 571.

[4] People v. Smith (1907), 134 Cal. 453, 66 Pac. 669; Huntington v. Superior Court (1907), 5 Cal. App. 289, 90 Pac. 141; People v. Huntington (1908), 8 Cal. App. 612, 97 Pac. 760.

[1] Sbarboro v. Jordan (Oct. 4, 1912), 44 Cal. Dec. 489, 127 Pac. 170.

[2] Stats. (1911) Ex. Sess. p. 83.